IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2598 OF 2002

Suhasini P. Bhatt .. Petitioner

versus

Bombay Housing & Area Development

Board and others .. Respondents

...

Mr.Prasad M. Gaonkar for the petitioner.

Mr.P.G. Lad AGP for the respondent nos.1 and 2.

Mr.V.S. Kapse for the respondent no.3.

CORAM : D.G. KARNIK,J.

DATED : 13th June 2005.

P.C.:

1. By this petition, the petitioner challenges the order dated 4th September 2002 passed by the respondent no.2 allotting Gala nos. B-116 and B-117 (hereinafter referred to as 'new galas') jointly to the petitioner and respondent no.3.

2. The property bearing no. 81, B.D.Bhadkamkar Marg, Mumbai 400007, belonged to Suresh K. Jasawa and others. Premises admeasuring about 22.32 sq.meters (hereinafter referred to as "the old premises") situated on the ground floor of the old building on the said property were let out and the rent receipts were issued in the name of Rajaram Bhatt, the father of respondent no.3. According to the petitioner, her husband who was the brother-in-law (sister's husband) of Rajaram Bhatt was occupying the old premises though the rent receipts were issued in the name of Rajaram Bhatt. The property bearing no.81, B.D. Bhadkamkar Marg, had become old and dilapidated and therefore the respondent no.1 decided to demolish the old building and reconstruct a new building in its place in accordance with the provisions of Maharashtra Housing Area Development Authority Act 1976 (for short 'the Act'). Accordingly, the possession of the property was taken from all the occupiers and the old building was demolished and reconstructed. Premises bearing unit nos. B-116 and B-117 situated in the newly reconstructed building are to be allotted in lieu of 22.32 sq. meters of old premises which were

previously occupied by the petitioner. In addition, some additional amount is required to be paid for the allotment as the area of the new premises is a little over 22.32 sq.meters. Both the petitioner and respondent no.3 claim that the new premises should be allotted to them.

3. After the redevelopment of the old premises a letter of allotmemt was issued in the joint names of the petitioner and the respondent no.3. The letter of allotment states that the petitioner was the occupant and the respondent no.3 was the original tenant.

4. It appears that respondent no.3 moved the respondent nos.1 and 2 stating that the allotment should have been in his name alone and not in the joint names of the petitioner and himself. It further appears that on or about 19th October 2001, respondent nos.1 and 2 dispossessed the petitioner who was in possession of the new premises bearing no.B-116 and B-117. Thereupon the petitioner filed a Writ Petition bearing W.P. no.2725 of 2001 in this Court for restoration of possession to her. Grievance was made by the petitioner that the

respondent no.1 had dispossessed her without giving an opportunity of hearing and without following due procedure of law. This Court came to a conclusion that no opportunity of hearing was given to the petitioner before she was dispossessed and she was entitled to the hearing. In this view, by an order dated 23rd October 2001, this Court directed that respondent nos.1 and 2 to remove the seals put to the new premises and restore possession thereof to the petitioner. This court permitted the respondent nos.1 and 2 to take appropriate action after giving an opportunity to the petitioner and respondent no.3 of being heard and to decide the matter. In pursuance of that decision, the respondent nos.1 and 2 issued notices to the petitioner and respondent no.3. After hearing them, the respondent no.2 came to the conclusion that the allotment of the new premises should be in joint names of the petitioner and respondent no.3. Accordingly, respondent no.2 passed an order directing that the new premises bearing gala nos.B-116 and B-117 be allotted to the petitioner and the respondent no.3 jointly. That order is impugned in this petition.

5. Admittedly, the rent receipt in respect of the

old premises stood in the name of the father of the respondent no.3. The petitioner claims that her husband was brother-in-law (sister's husband) of the father of the respondent no.3 Rajaram. It is not disputed that the rent receipt stood in the name of Rajaram. It is however contended that though the rent receipt stood in the name of Rajaram - father of respondent no.3 - in fact Rajaram was not in occupation of the premises and the husband of the petitioner who was the brother-in-law of Rajaram was actually in possession of the premises and was paying the rent. The petitioner therefore contends that her husband and not Rajaram was the occupier of the suit premises within the meaning of section 2(25) of the Act.

6. Section 2(25) reads as under:-

> (25) "occupier" includes -
>
> (a) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable;
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> (b) any owner in occupation of, or otherwise using, his land or building;
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> (c) a rent-free tenant of any land or building;

> (d) a licensee e in occupation of any land or building; and
>
> (e) any person who is liable to pay to the owner damages for the use and occupation of any land or building;

Perusal of clause (a) of sub section 25 of section 2 of the Act would show that the person who is liable to pay the rent to the owner would be regarded as occupier. Rajaram being the person in whose name the rent receipt stood was liable to pay the rent and has therefore be regarded as an occupier of the premises. Numerous documents were produced by the respondent no.2 to show that she along with late husband was in physical possession of the old premises. That at the most would make him a licencee, gratuitous or otherwise, of Rajaram who appears to have allowed the petitioner and her husband to occupy the premises. Therefore, she and her husband would also be regarded as occupiers under clause (d) of section 25 of section 2 of the Act. Therefore, both the husband of the petitioner and father of the respondent no.3 from who they respectively claim would be regarded as the occupiers.

7. It is worthwhile to note that after the possession of the suit premises was taken for the purpose of redevelopment, the petitioner and respondent no.3 both were provided temporary transit accommodation and compensation of the transit accommodation has been recovered from both the petitioner and respondent no.3. Learned counsel for the petitioner contends that though the rent receipt stood in the name of father of respondent no.3, he was never in possession of the property and petitioner and her husband were in exclusive possession of the property. Reliance is placed upon some documents copies of which are annexed to the petition. At best, these documents show the petitioner and her husband was in occupation of the property but none of the documents show that they were in exclusive occupation of the property to the exclusion of the respondent no.3 and his father. May be that they were in joint occupation along with father of respondent no.3 in whose name the tenancy stood. The issue as to whether the petitioner was in exclusive occupation of the property or not is a disputed question of fact which cannot be decided in a Writ Petition. As stated earlier admittedly, rent receipt stood in the name of the father of

respondent no.3 and therefore he would be regarded as occupier under clause (a) of sub section 25 of section 2 of the Act. The husband of the petitioner being in possession of the property, may be as a licencee, could at best be regarded as joint occupier of clause (d) of sub section 25 of section 2 of the Act.

8. In the circumstances, the order passed by the respondent no.2 holding that both the petitioner's husband and respondent's father were the co-occupiers making the order of allotment in the joint names cannot be said to be perverse requiring interference in a writ jurisdiction. In the circumstances, Writ Petition is dismissed.

9. In the facts and circumstances of the case the parties shall bear and pay their own costs.

D.G. KARNIK, J